STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEAMSTERS LOCAL 350, Charging Party, v. CITY OF LOS ALTOS, Respondent.	Case No. SF-CE-331-M PERB Decision No. 1891-M March 14, 2007

Appearances: Beeson, Tayer & Bodine by Duane B. Beeson, Attorney, for Teamsters Local 350; Liebert Cassidy Whitmore by Richard S. Whitmore and Greg Groeneveld, Attorneys, for City of Los Altos.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Teamsters Local 350 (Local 350) of a Board agent's partial dismissal (attached) of their unfair practice charge. The charge alleged that the City of Los Altos (City) violated the Meyers-Milias-Brown Act (MMBA)[1] by failing to provide Local 350 with a notice of intent to terminate employment of represented employee Keith Amdur (Amdur). Local 350 alleged that the City's policy of not providing disciplinary information without the express consent of the employee involved was on its face a violation of the MMBA.

The Board has reviewed the entire record in this matter, including, but not limited to, the unfair practice charge, the amended unfair practice charge, the partial warning and dismissal letters, Local 350's appeal and the City's opposition. The Board finds the partial

[1]MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

warning and dismissal[2] letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

BACKGROUND

The unfair practice charge in this case was filed on December 1, 2005, and alleged that the City failed to provide Local 350 with information about an August 2005 notice of intent to terminate employment of City employee Amdur, a member of Local 350's bargaining unit.[3] A June 19, 2006, amended charge clarified Local 350's charge that the City's policy of denying disciplinary information without the express authorization of the employee(s) is "on its face a violation of the Meyers-Milias-Brown Act" and was not specific to Amdur. The Board agent's warning and dismissal letters analyze whether or not the City violated the MMBA by unilaterally implementing the policy[4] and whether or not the City failed to provide requested information to which Local 350 was entitled. Local 350's appeal alleges that the City's refusal to provide the disciplinary information on the grounds that doing so would violate the employee's right of privacy, constituted an ongoing interference with Local 350's ability to exercise its representation duties. Local 350 concedes that there is "no union request for identified information in the present situation." Rather, the union argues that it is entitled to "automatic disclosure by the Employer to the Union of all disciplinary actions."

[2]The Board agent's partial dismissal includes an erroneous reference to the letter as a "partial warning letter" but the error is not prejudicial.

[3]The December 2005 unfair practice charge also alleged that the City failed to provide the names and mailing addresses of all bargaining unit employees. That charge was later settled in a July 27, 2006, partial settlement agreement and will therefore not be discussed in this decision.

[4]While Local 350's appeal asserts that the case is not a unilateral change case, its amended charge states that the policy was implemented "without notice to, participation by, or consent of the Union." Therefore, the Board agent was correct in analyzing whether or not implementation of the policy constituted a unilateral change.

DISCUSSION

The issue for the Board's consideration is whether or not the City's policy of refusing to provide disciplinary information of unit employees absent express authorization by the employee involved violates the MMBA. Local 350 argues that this policy violates the MMBA on its face because it interferes with the union's ability to carry out its representation duties. According to Local 350, "the City's policy forecloses the Union from being informed by the City that there may be a problem that triggers its representation obligations."

The City's position is that the policy at issue is longstanding and intended to protect the privacy rights of its employees. The City argues that the constitutional right to privacy afforded the employees trumps any right to information asserted by Local 350. PERB need not address the constitutional argument raised by the City based on our finding that Local 350 has no such right to the information, as will be discussed below.

The parties do not dispute that when consent is given by the employee, the disciplinary information is provided by the City to Local 350. Rather, Local 350 suggests that even absent consent by the employee and with no pending request by the union, the City's refusal to provide the information constitutes an unfair labor practice. Local 350 argues that the current policy of requiring employee consent impedes its ability to carry out its representation duties in three ways: (1) the policy prevents the union from becoming aware of the nature and frequency of disciplinary actions within the bargaining unit; (2) knowledge of incidents of discipline enables the union to inform its members of facts that may affect the employees' behavior on the job; and (3) the union has the responsibility to deal with the employer concerning matters that could affect the terms and conditions of their employment.

Local 350 cites no PERB authority and we found no authority for the speculative proposition that the union is entitled to all information that could conceivably aid the union in

its representation duties. Rather, we agree with the City's assertion that "the Union does not have unfettered access to employees' personal information." The Board has held that the union is entitled to information that is "necessary and relevant to discharging its duty to represent unit employees." (Stockton Unified School District (1980) PERB Decision No. 143.)

Furthermore, PERB has held that there is no duty to provide information absent a request. (Oakland Unified School District (1982) PERB Decision No. 275; Los Angeles Unified School District (1990) PERB Decision No. 835.) Thus, Local 350's concession that it has no pending request for identified information is pivotal because without a request, Local 350 has no right to the disciplinary information which they argue they are entitled to as a matter of course. However, even if there were a proper request by Local 350, that request would have to be considered in light of the privacy considerations of the employees subject to discipline.

Local 350's alternative argument that the City's policy interferes with the union's ability to carry out its representation duties in violation of the MMBA also has no merit. In order to establish a prima facie case for interference under the MMBA, the charging party must establish that the conduct resulted in at least slight harm to employee rights. The courts have described the standard as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons. [Public Employees Assn. v. Board of Supervisors (1985) 167 Cal.App.3d 797, 807 [213 Cal.Rptr. 491].]

In light of our holding that the City had no duty to provide the information absent a request, we find that Local 350's allegations failed to demonstrate that the City's conduct resulted in any harm to employee rights.

Local 350 fails to state a prima facie case of a violation of the MMBA. Local 350's argument that the City's policy violates MMBA on its face is unpersuasive and unsupported by PERB case law. Additionally, Local 350's charge does not state a prima facie case for denial of requested information, because there is no request in dispute. Lastly, Local 350's charge does not state a prima facie case for interference because the City's conduct did not result in any harm to employee rights.

ORDER

Based on the foregoing, the partial dismissal of the unfair practice charge in Case No. SF-CE-331-M is hereby AFFIRMED.

Members Shek and McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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July 5, 2006

Duane Beeson, Attorney
Beeson, Tayer & Bodine
1404 Franklin Street, 5th Fl.
Oakland, CA 94612-3208

Re: Teamsters Local 350 v. City of Los Altos
Unfair Practice Charge No. SF-CE-331-M
PARTIAL DISMISSAL

Dear Mr. Beeson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 1, 2005. The Teamsters Local 350 (Local 350) alleges that the City of Los Altos (the City) violated the Meyers-Milias-Brown Act (MMBA)[1] by failing to provide a Notice of Intent to Terminate Employment of represented employee Keith Amdur. This partial warning letter does not relate to the allegations that the City failed to provide the home addresses and phone numbers of bargaining unit members as requested in November 2005.

I indicated to you, in my attached letter dated May 26, 2006, that certain allegations contained in the charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended these allegations to state a prima facie case or withdrew them prior to June 2, 2006, the allegations would be dismissed.

You requested and were granted an extension to file an amended charge. On June 12, 2006, I received your First Amended Charge. Your amended charge does not contain any additional facts, rather you argue that my Warning Letter misconstrued the legal theory under which the employer allegedly violated the MMBA. My Warning Letter analyzed the employer's policy of not notifying the union of disciplinary action against represented employees as a unilateral change allegation. In your First Amended Charge, you state. "the issue now presented is whether the City's policy of refusing to inform the Union of disciplinary actions against bargaining unit employees.. .is on its face a violation of the Meyers-Milias-Brown Act." You claim that in circumstances where an employee knowingly declines to involve the union in the disciplinary action, or where an employee is unaware of his/her rights to be represented by the

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

union at the disciplinary hearing, the city's policy forecloses the union from meeting its representation obligations.

An employer's duty to provide information to the exclusive representative arises in several different contexts within the collective bargaining relationship. One such circumstance is where an employer intends to implement new, or change existing policy. In that case, a failure to provide the exclusive representative notice and an opportunity to demand bargaining over the proposed change is a violation of the MMBA. Another such circumstance is where the exclusive representative has requested information that is necessary and relevant to its representational duties. Failure to respond to a request for information that is necessary and relevant to a union's representational duties is a violation of the MMBA. However, absent circumstances giving rise to a duty to provide information, there is no mechanism for requiring an employer to provide any and all information that might one day become relevant to the union's duties as an exclusive representative.

My Warning Letter addressed the factual deficiencies in either a unilateral change allegation or an alleged violation of the duty to respond to an information request. Your First Amended Charge does not cure these factual deficiencies, and in fact states: "The amendment is intended to eliminate the issues of whether there was a unilateral change in City policy as well as those involving Mr. Amdur's discharge."

In Oakland Unified School District (1982) PERB Decision No. 275, the Board held that absent either the employer's deliberate withholding of information on a negotiable subject, or the union's request for the specific information, the employer's failure to inform the union of its adoption of a policy was not evidence of bad faith. The Board reasoned that all employers have many policies which may be of interest to a union, and that such policies were reachable through information requests. Id. As stated in your charge, the employer has refused to volunteer useful information until it is obligated to do so. However, you have not provided any facts that tend to demonstrate that the employer is either deliberately concealing information from the union, or that it is refusing to provide information upon request. Therefore, based upon the rule from Oakland Unified School District, you have not alleged sufficient facts to establish that the employer's policy has violated the MMBA.

Therefore, I am dismissing those allegations related to the employer's policy of refusing to inform the Union of disciplinary actions against bargaining unit employees for failure to state a prima facie case based on the facts and reasons contained in this and my May 23, 2006 letter.

Right to Appeal

Pursuant to PERB Regulations,[2] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulation 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By
Alicia Clement
Regional Attorney

Attachment

cc: J. Logan, Human Resources Manager
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

AC

PUBLIC EMPLOYMENT RELATIONS BOARD

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May 23, 2006

Duane Beeson, Attorney
Beeson, Tayer & Bodine
1404 Franklin Street, 5th Fl.
Oakland, CA 94612-3208

Re: Teamsters Local 350 v. City of Los Altos
Unfair Practice Charge No. SF-CE-331-M
PARTIAL WARNING LETTER

Dear Mr. Beeson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 1, 2005. The Teamsters Local 350 (Local 350) alleges that the City of Los Altos (the City) violated the Meyers-Milias-Brown Act (MMBA)[1] by failing to provide a Notice of Intent to Terminate Employment of represented employee Keith Amdur. This partial warning letter does not relate to the allegations that the City failed to provide a the home addresses and phone numbers of bargaining unit members as requested in November 2005.

My investigation revealed the following. Local 350 is a party to a Memorandum of Understanding with the City of Los Altos, representing its public works employees. Keith Amdur is an employee of the City and a member of the bargaining unit represented by Local 350. On August 29, 2005, the City issued a Notice of Intent to Terminate Employment of Keith Amdur. However, the City did not serve a copy of that Notice on Local 350, apparently as part of a "policy of declining to provide the Union with employee disciplinary actions affecting bargaining unit members on the ground that such information would violate the employee's right of privacy." Local 350 learned of the Notice on September 19, 2005 when a City employee called to inform the Union that a Skelly hearing had been scheduled for September 23, 2005. The City eventually provided Local 350 with all of the disciplinary documents regarding Mr. Amdur, but only after Mr. Amdur gave his authorization for the City to do so.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Discussion

In determining whether a party has violated Government Code section 3505 and PERB Regulation 32603(c),[2] PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.)[3] Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

To the extent that the charge alleges a unilateral change in the City's policy regarding notification of disciplinary actions against bargaining unit members, you have alleged insufficient facts to establish that the City's failure to notify Local 350 of its Intent to Terminate Mr. Amdur's employment was a change in policy that was implemented before the City gave notice and an opportunity to request negotiations.

The exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143). PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

If the employer demonstrates substantial cost involved in providing the information in the precise form requested, the parties must bargain in good faith as to who will bear those costs. (Los Rios Community College District (1988) PERB Decision No. 670; Tower Books (1984) 273 NLRB 671.)

To the extent that the charge alleges a failure to provide necessary and relevant information, it is unclear whether and when Local 350 requested the information, giving rise to a duty by the City to provide it or provide a reason why it cannot do so. Finally, according to the City, it eventually did provide the requested information.

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[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[3] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

For these reasons the allegation that the City failed and refused to provide the union with a copy of a Notice of Intent to Terminate Employment of Keith Amdur, dated August 29, 2005, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June *2,* 2006, I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at the telephone number listed above.

Sincerely,

Alicia Clement
Regional Attorney

AC